

INTERNAL REVENUE SERVICE
DISTRICT DIRECTOR
31 HOPKINS PLAZA
BALTIMORE, MD 21201

DEPARTMENT OF THE TREASURY

Person to Contact:

Contact Telephone Number:

Reply to: EP/20:T

Date: JAN 1 1996

CERTIFIED MAIL

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code and have determined that you do not qualify under that section. Our reasons for this conclusion and the facts on which it is based are explained below.

The evidence submitted indicates that you were incorporated under the laws of . Your Articles of Incorporation were restated on . Your Restated Articles of Incorporation provide that you are organized and operated exclusively for charitable, religious, literary, scientific and educational purposes as set forth in section 501(c)(3) of the Internal Revenue Code of 1986. This document also provides for the distribution of your assets in the event your organization dissolves.

You state in your application that " is a religious ministry whose purpose is to help financially strengthen the religious community by providing financial planning concepts and teachings of financial issues addressed in the bible."

As part of your proposed activities, you state that " will hire and pay for certified professionals to provide services to those individuals that need one-on-one counseling. The certified professionals will be able to educate these individuals about financial planning concepts and income tax planning." You also state that "the majority of the funds received by will go for this purpose."

to	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
name							
	12-24-95	1-3-96	1-17-96				

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Other activities described in your application include conducting seminars and providing manuals with regard to financial planning and income tax planning. You also state that "████ will market their services to various churches in the area." Your application further provides that "Before █████ will accept an individual for counseling, that individual must have a referral letter from the pastor of their church and demonstrate why they are unable to hire a certified professional on their own. Upon acceptance, █████ will provide a grant to the individual, payable to the professional, for the professional services needed. Individuals will not directly receive any monies from █████."

You state in your application that the professionals hired by █████ to provide these counseling services will be hired at their normal rates. Your Director, █████, states that he currently charges \$████ per hour plus out-of-pocket expenses for his private business clients." You also indicate that █████ would charge the same fee for any of their individual or church clients. There is no indication that █████ or any of the professionals assisting █████'s clients will provide these services below the normal commercial rate.

The professionals hired by █████ to perform these services will include Certified Financial Planners, Certified Public Accountants and Attorneys. Your founder, █████, currently serves as initial Director, President and Treasurer of █████. █████ is currently the only person on the board who fits any of these professionals categories since he is a practicing CPA.

In addition, your Director, █████, also states that he expects to be compensated for preparing federal and state tax returns for █████ and for performing the following accounting related services for clients of █████ at a rate of \$████ per hour plus out-of-pocket expenses:

1. Preparation of tax returns;
2. Correspondence with governmental agencies;
3. Retirement Planning;
4. Tax Consultation;
5. Budgeting;
6. Business Plans.

Income to your organization is expected from contributions and fees charged to clients of █████. Expenses are anticipated for office supplies, printing costs, a 10% tithe to local churches and fees to be paid for hiring certified professionals.

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Section 501(c)(3) of the Internal Revenue Code provides for the exemption from Federal income tax for organizations that are organized and operated exclusively for charitable, religious and other stated purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to qualify for exemption under section 501(c)(3), an organization must be both organized and operated exclusively for one or more exempt purposes. Failure to meet either the organizational or operational test will disqualify an organization from exemption under section 501(c)(3).

Section 1.501(c)(3)-1(b)(1) of the Regulations states that an organization is organized for one or more exempt purposes, if its Articles of Incorporation limit the purposes of such organization to exempt purposes.

Section 1.501(c)(3)-1(b)(4) of the Regulations provides that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal government, or to a State or local government for a public purpose.

Section 1.501(c)(3)-1(c)(1) of the Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages in activities which accomplish such purposes. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations states that an organization is not organized or operated for any purpose under section 501(c)(3) unless it serves a public rather than a private interest. Thus, to meet the requirements of this subparagraph, it is necessary for organization to establish that it is not organized and operated exclusively for the benefit of private interests such as designated individuals, the creator or his family, shareholder of the organization or persons controlled directly or indirectly by such private interests.

In Better Business Bureau v. United States, 326, U.S. 279-283, the court held that the existence of a single non-exempt purpose, if substantial in nature, will destroy exemption under section 501(c)(3) regardless of the number or importance of truly exempt purposes. To qualify for exemption under section 501(c)(3), the applicant organization must show that (1) it is organized and operated exclusively for religious, charitable or other stated purposes, (2) that no part of the net earnings of the organization inures to the benefit of a private shareholder or individual, and (3) that no substantial part of its activities consists of the dissemination of propaganda or otherwise attempting to influence legislation or engaging in political activity. See Kenner v. Commissioner, 318 F. 2nd, 632, (7th Cir. 1963).

In Ecclesiastical Order of the Ism of AM, Inc. v. Commissioner, 80 TC 833, the Tax Court ruled that an organization that provided tax counseling information and financial planning advice is not entitled to exemption under section 501(c)(3) of the Internal Revenue Code. The court stated that "the dissemination of this type of information does not serve exclusively religious or charitable purposes." The court also noted that the information furnished was no different from the type distributed by a commercial tax service. It was also noted that furnishing tax and financial advice served the interests of private individuals rather than the broad public interests required to be exempt under section 501(c)(3).

In Christian Stewardship Assistance, Inc. v. Commissioner, 70 U.S. Tax Court, 1037, the court reviewed the exempt status of an organization whose sole activity was conducting financial planning and tax information seminars and workshops. The court held that this organization's activities served a substantial non-exempt purpose that was indistinguishable from services provided by a commercial financial planning entity. In addition, the tax benefits received by the contributors to the organization caused the net earnings of the organization to inure to the benefit of private individuals. Under these circumstances, the court determined that the organization's activities served the interests of private individuals rather than exclusively public interests which defeated exemption under section 501(c)(3).

In Ralph H. Eaton Foundation v. Commissioner, 55-1, U.S.T.C. 54,533, the issue of whether a corporation engaged in business activities that are normally conducted for profit and that gives these profits to religious and charitable enterprises is exempt under section 501(c)(3) is discussed. The court held in this case that this organization was organized and operated for two purposes: (1) to engage in commercial business for profit and (2) to turn over the profits realized from these commercial activities to charitable organizations. In denying exemption to this organization, the court held that "The second purpose is charitable, the first purpose clearly is not. To qualify for exemption under section 501(c)(3), the corporation must be organized and operated exclusively for charitable and other exempt purposes."

Revenue Ruling 72-369, published in Cumulative Bulletin 1972-02, page 245, denied exemption to an organization formed to provide managerial and consulting services at cost to unrelated exempt organizations. The ruling states:

"Providing managerial and consulting services on a regular basis for a fee is a trade or business ordinarily carried on for profit. The fact that the services in this ruling are provided at cost and solely for exempt organizations is not sufficient to characterize this activity as charitable within the meaning of Section 501(c)(3) of the Internal Revenue Code. Furnishing the services at cost lacks the donative element necessary to establish this activity as charitable."

Our review of the information submitted indicates that your Restated Articles of Incorporation meet the organizational test required for exemption under section 501(c)(3). However, your proposed plan to hire certified professionals to hold one-on-one counseling sessions with various individuals on financial and tax planning topics indicates that your primary purpose is like the organizations described in the precedents cited above where the court held that an organization providing financial and tax planning advice for a fee is not entitled to exemption under section 501(c)(3). The fact that you expect to pay the certified professionals the standard \$[redacted] per hour commercial rate plus out-of-pocket expenses for their services indicates that your primary purpose is not exclusively religious or educational, but commercial.

As stated in Revenue Ruling 72-369, "providing managerial and consulting services on a regular basis for a fee is a trade or business ordinarily carried on for profit." The fact that the services are provided at cost and for exempt organizations is not sufficient for this activity to be classified as charitable within the meaning of section 501(c)(3)." The activities of your organization indicate that the proposed fees are no different from those charged by a commercial tax preparer. In addition, while the church clients to be served by your organization qualify as exempt organizations, any individuals receiving services from [redacted] are clearly receiving assistance which furthers their private interests rather than the broad interests of the entire community.

Your proposed method of operation and activities also provide an opportunity for clients to be referred to your Director whom he would not normally be in contact. By operating in this manner, [redacted] is indirectly acting as a marketing device for [redacted]'s CPA business. You have also indicated that [redacted] expects to be compensated for various services, including preparation of federal and state income tax returns, retirement planning services, tax consulting, budgeting and formulating business plans. Since [redacted] is the principal officer of [redacted], this proposed arrangement provides substantial private benefit to him which precludes exemption under section 501(c)(3).


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Therefore, based on the evidence submitted, we have concluded that you do not qualify for exemption under section 501(c)(3) of the Internal Revenue Code. In accordance with this determination, you are required to file federal income tax returns on Form 1120.

Contributions to your organization are not deductible by donors under section 170(c)(2) of the Code.

If you do not agree with our determination, you may request consideration of this matter by the Office of the Regional Director of Appeals. To do this, you should file a written appeal as explained in the enclosed Publication 892.

Your appeal should give the facts, law, and any other information in support of your position. If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date. The hearing may be held at the regional office, or, if you request, any mutually convenient district office.

If you will be represented by someone who is not one of your principal officers, that person will need to file a Power of Attorney or tax information authorization with us.

If you don't appeal this determination within 30 days from the date of this letter, as explained in Publication 892, this letter will become our final determination in this matter. Further, if you do not appeal this determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust administrative remedies.

Section 7428(b)(2) of the Code provides, in part, that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted all administrative remedies available to it within the Internal Revenue Service."

Appeals which do not contain all the documentation required by Publication 892 will be returned for completion.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours 


District Director

Enclosure: Publication 892
cc: State Attorney General ()